

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**VISIBLE SYSTEMS CORPORATION,  
a Massachusetts Corporation,**

**Plaintiff,**

**v.**

**C.A. No. 04-CV-11610-RGS**

**UNISYS CORPORATION,  
a Delaware Corporation,**

**Defendant.**

**PLAINTIFF'S PROPOSED  
STATEMENT OF CLAIMS AND DEFENSES  
TO BE READ TO THE VENIRE DURING EMPANELMENT**

Plaintiff proposes that the following statement of the parties' claims and defenses be read to the venire during empanelment:

This is an action for trademark infringement. The plaintiff, Visible Systems Corporation, alleges that defendant, Unisys Corporation, has committed trademark infringement and unfair competition under both state and federal law. Both claims arise from Defendant Unisys Corporation's use of the mark "3D Visible Enterprise" starting in June 2004, and Unisys Corporation subsequently beginning to use other Visible-name marks including Visible Bank, Visible Process, Visible Security, Visible Infrastructure and Visible Deployment.

Plaintiff Visible Systems Corporation contends that, as of June 2004, it was, and still is, the owner of the several valid marks, some registered on the Principal Register of the United States Patent and Trademark Office and some unregistered.

Plaintiff claims that, on November 19, 1985, it registered as trademarks the phrases “Visible Systems Corporation” and “Visible Systems.” Plaintiff claims that it has used these marks to designate its products and services continuously since that time. Plaintiff also asserts that these two registered marks have become “incontestable” under federal trademark law. I will explain the significance of the term “incontestable” at trial at an appropriate time.

Plaintiff also claims that, continuously since its founding in 1984, it has used the word “Visible” in a series of unregistered trademarks and service marks that have served as the names of its various products and services, such as Visible Advantage, Visible Advisor, Visible Analyst, Visible Consulting, Visible Developer, Visible Enterprise Workbench, and others. Plaintiff contends that it registered the word “Visible” as a trademark on December 11, 2001, and that it also registered the word “Visible” as a service mark on March 12, 2002.

Plaintiff claims that, by using the mark “3D Visible Enterprise” and other marks, names and slogans using the word “Visible, defendant has used plaintiff’s mark without its permission, has created a likelihood of confusion among the relevant public, and so has infringed upon Plaintiff’s trademarks and service marks in violation of the common law and relevant federal statutes. Plaintiff also contends that defendant’s infringement was willful. Plaintiff seeks an injunction preventing Defendant’s further infringement and money damages from defendant for infringement.

Defendant denies Plaintiff’s allegations, contends that Plaintiff’s various trademark and service mark registrations should be struck down as invalid, and asserts several defenses. Its claimed defenses are that Plaintiff’s trademark registrations are

invalid, that Plaintiff is estopped from making its claims, and that Plaintiff has unclean hands.

PLAINTIFF VISIBLE SYSTEMS CORPORATION  
By its attorneys:

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Dated: July 13, 2007

**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

July 13, 2007

/s/ Stephen H. Galebach  
Stephen H. Galebach